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HIGH COURT OF CHHATTISGARH, BILASPUR

M. A. (C) No.898 of 2007

APPELLANT: Rajesh Kumar Pandey

- Versus -

RESPONDENTS: Vidyanand Thakur & others

ORDER FOR CONSIDERATION

Sd/-

HON'BLE MR. JUSTICE SUNIL KUMAR SINHA

I agree.

Sd/-
Sunil Kumar Sinha
Judge

POST FOR PRONOUNCEMENT OF ORDER ON 16th NOVEMBER, 2007

Sd/-
L.C. Bhadoo
Judge

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HIGH COURT OF CHHATTISGARH, BILASPUR

Division Bench: **Hon'ble Mr. L.C. Bhadoo and**
Hon'ble Mr. Sunil Kumar Sinha, JJ.

M. A. (C) No.898 of 2007

APPELLANT: Rajesh Kumar Pandey, aged about 21 years, S/o Late Shri Ramjhul Pandey, R/o Near Budhwari Bazar, Beergaon, Raipur, District Raipur (CG)

- Versus -

RESPONDENTS:

1. Vidyanand Thakur, aged about 34 years, S/o Shri Nageshwar Thakur, R/o Sector-II, Bhilai, City & District Durg (C.G.)
2. Anil Kumar Jain, S/o Shri Gulab Chand Jain, R/o Mohaba Bazar, Raipur, City & District Bilaspur (C.G.)
3. The Oriental Insurance Company Limited, Through: Divisional Manager, The Oriental Insurance Company Limited, Madina Manzil, Jail Road, Raipur, District Raipur (C.G.)

Present:

Mr. R. Pradhan, counsel for the appellant.

Mr. Sudhir Agrawal, counsel for respondent No.3/Insurance Company.

(Appeal under Section 173 of the Motor Vehicles Act, 1988)

ORDER

(Passed on 16th November, 2007)

The following order of the Court was passed by ***L.C. Bhadoo, J.***

1. The claimant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act, 1988') for enhancement of the compensation amount, being aggrieved by the award dated 30-3-2007 passed by the 11th Additional Motor Accident Claims Tribunal (FTC) Raipur, in claim case No.74/2004 whereby the learned Tribunal awarded

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compensation to the claimant to the tune of Rs.2,03,500/- under the following heads:-

(i) Rs.1 lakh for taking treatment in Bhilai Hospital.

(ii) Rs.25,000/- paid to Kalda Nursing Home for treatment.

(iii) Rs.1500/- for ambulance charges.

(iv) Rs.72,000/- for loss of income for 3 years and the Tribunal assessed income of the claimant as Rs.2,000/- per month and

(v) Rs.5,000/- has been awarded under the head of pain and suffering.

Thereby in all Rs.2,03,500/- has been awarded.

2. Facts of the case, in brief, necessary for the disposal of this appeal are that on 22-12-2001 claimant Rajesh Kumar Pandey was working as helper on the crane vehicle bearing No.M.P.-23/GA-7949. On that day at about 5 p.m. non-applicant Vidyanand Thakur was using and operating the said crane vehicle at Bhavani Timber, Ranwabhata, Police Station Khamtarai. As a result of rash and negligent operation of the said crane vehicle by non-applicant No.1, operator, part of the crane came in contact with the live electric wire, as a result of which the claimant along with Bharat Verma and Ishwar Sinha sustained burin injuries due to electric current. The applicant became permanent disable whereas, Ishwar Sinha died on account of electrocution. The matter was reported in the Police Station Khamtarai under Crime No.4/2002 against non-applicant No.1 for commission of offence under Section 304-A of the I.P.C. The police after investigation filed charge sheet in the Court of Judicial Magistrate. The claimant was admitted in the Kalda Nursing Home & thereafter Sector-9 Hospital, Bhilai. He sustained serious injuries on hand and leg, as a result of which his left leg below the knee was amputed. He incurred expenses to the tune of Rs.2 lakhs for treatment. As per the medical certificate, he sustained 60% permanent disability. At the time of the accident he was aged about 21 years. He used to earn Rs.2,000/- per month along with Rs.50/- as daily allowance. Non-applicants No.1 and 2, owner and driver of the said crane vehicle, remained ex-parte. They did not file any reply. However, the claim was contested by the Oriental Insurance Company by filing a reply in which it was mentioned that the alleged accident does not come within the purview of motor accident. In fact, the accident took place on account of crane dashed with the motor.

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3. After framing of the issues, parties were allowed to lead evidence. After considering the evidence, pleadings of the parties and material on record, learned Tribunal passed the impugned award.

4. Cross-appeal has also been filed by respondent No.3 saying that the said accident does not come within the purview of the Act, 1988. Even it has been mentioned that the claimant is not entitled for compensation amount awarded to him.

5. We have heard learned counsel for the parties.

6. As far as challenge to the compensation amount is concerned, respondent Company has not sought any permission under Section 170 of the Act, 1988 to challenge the compensation amount. Therefore, respondent Company is not entitled to challenge the compensation amount. The company is entitled to raise objection as contained in Section 149(2) of the Act, 1988, therefore, learned counsel for respondent No.3/Insurance Company argued only one point that the accident in question does not come within the purview of the motor accident & the claimant is not entitled for any compensation under the provisions of Section 166 of the Act, 1988.

7. On the other hand, learned counsel for the claimant argued that in fact, the claimant sustained fatal injury in use of motor vehicle, as such, he is entitled for the claim.

8. In this connection, provisions of Section 165 of the Act, 1988 envisage that 'A State Government may, by notification in the official Gazette, constitute one or more Motor Accidents Claims Tribunals for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, *persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.*' Section 166 of the Act, 1988 envisages that an application for compensation arising out of an accident of the nature specified in sub-section (1) of Section 165 may be made before the Tribunal. Therefore, conjoint reading of Sections 165 and 166 of the Act, 1988 makes it clear that the claim for compensation in respect of accidents involving the death or bodily injury to persons arising out of the use of motor vehicles can be filed before the Accident Claims Tribunal.

9. Perusal of para-4 of the claim petition filed by the claimant shows that on 22-12-2001 at about 5 p.m. respondent No.1 herein was operating motor

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crane bearing No.M.P.-23/GA/7949 at Bhavani Timber, Ranwabhata, Police Station Khamtarai, on account of rash and negligent operation of the said vehicle by respondent No.1 crane came in contact with the live electric wire, as a result of which claimant, Bharat Verma and Ishwar Sinha suffered electric current, due to which the applicant became permanent disable and Ishwar Sinha died on account of electrocution.

10. Claimant Rajesh Kumar Pandey has stated that on 22-12-2001 at the time of the accident respondent No.1 was operating crane bearing No.M.P.23/GA-7949. They went in the said crane to Bhavani Timber, Ranwabhata. They were unloading the truck & half truck was already unloaded, at that time pressure machine was being lifted. On account of rash and negligent operation of the crane, crane came in contact with the live electric wire, as a result of which all of them sustained electric current, his left leg was burnt due to electric current and Ishwar Sinha died on account of electrocution. He was admitted in the Kalda Nursing Home & thereafter to Sector-9 Hospital, Bhilai. On account of spreading of poison in his left leg, his left leg was amputed below knee. He has become permanent disable. Even Bharat Verma has also given his evidence on affidavit. In reply to the above evidence, no evidence has been adduced by the respondent/Insurance Company. There is nothing on record to controvert the above evidence of claimant and Bharat Verma who were sitting on the motor crane at the relevant time, therefore, from the evidence of these two witnesses, it is established that the claimant sustained electric current & he sustained injury arising out of the use of motor vehicle. Therefore, the claimant has rightly filed claim petition. He is entitled to file claim under Section 166 of the Act, 1988. We do not find any substance in the argument advanced by learned counsel for the Insurance Company.

11. Learned counsel for the appellant argued that under the head of disability even though learned Tribunal in para-12 has held that the claimant has sustained 60% permanent disability, even then compensation for loss of 3 years' salary has been awarded. But the fact remains that on account of amputation of leg the claimant is not able to work, therefore, he has suffered 100% disability. He is a boy of 21 years, therefore, by applying multiplier of 17 he ought to have been awarded compensation of 17 x Rs.24,000/- = 4,08,000/- for loss of income.

12. As per the finding of the Tribunal in para-12, the Tribunal has held that as per the certificate given by the doctor, on account of amputation of left leg

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of the claimant he has sustained 60% permanent disability. In this connection, evidence of witness No.2 Dr. Mamta is relevant, who has stated that she is working as Deputy Director in Sector-9 Hospital, Bhilai, in burn unit. The claimant namely, Rajesh Pandey remained admitted in their hospital from 25-12-2001 to 14-2-2002. He was admitted in the hospital on 25-12-2001. On account of electric current sustained by him, his leg was swollen and was burnt. Left palm of the hand was also burnt. Grafting was done on the burn part. Thereafter on 31-1-2002 his left leg was amputed below knee. He was discharged on 14-2-2002. She has further stated that on account of amputation of leg and other injuries he will not be able to work and he has become totally permanent disable.

13. In view of the above evidence and the evidence of Rajesh Kumar Pandey, after amputation of leg he is not able to work, thereby he has become totally disable to earn his livelihood by engaging himself in any work. Therefore, this is a case of permanent disability and total deprivation from the work in order to earn his livelihood. The Tribunal has assessed his monthly income at Rs.2,000/- & he is a boy of 21 years, therefore, as per the Schedule II appended with the Act, 1988, multiplier of 17 has to be applied, therefore, he is entitled for compensation to the tune of Rs.4,08,000/-.

14. In the result, the appeal of the claimant succeeds and same is allowed. The claimant shall be entitled to compensation of Rs.4,08,000/- under the head of 100% permanent disability in addition to following heads:-

(i) Rs.1 lakh towards treatment in Bhilai Hospital.

(ii) Rs.25,000/- towards treatment in Kalda Nursing Home.

(iii) Rs.1500/- towards ambulance charges.

(iv) Rs.5,000/- towards pain and suffering.

He shall be entitled for interest @ 6% on the above amount from the date of filing of the claim petition i.e. 2-11-2004.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Sunil Kumar Sinha
Judge

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